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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 230

JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

JOYCE AGENCY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONSE TO MEMORANDUM ON BEHALF OF JOYCE AGENCY, INC., SUGGESTING THAT THE ACTION IS MOOT, AND MOTION TO JOIN OR SUBSTITUTE GOLDBLATT BROS., INC., AS A PARTY

This case is pending in this Court upon writ of certiorari granted on October 14, 1954 (R. 137). On January 6, 1955, counsel for respondent filed a "Memorandum on Behalf of Joyce Agency, Inc." stating that Joyce Agency, Inc., an Illinois corporation, has ceased doing business and has been dissolved as a corporation and that therefore this action is moot.

The Solicitor General, on behalf of petitioner, respectfully submits that the action is not moot, that under the law of Illinois respondent corpora-

tion is still in existence for purposes of prosecution and defense of this action, and that this Court has jurisdiction to proceed with the determination of the case on the merits. The Solicitor General, on behalf of the petitioner, also respectfully submits and moves that any doubt that the judgment on the merits will be effective should be resolved by joining or substituting Goldblatt Bros., Inc., as a party-respondent to this action.

Goldblatt Bros., Inc., also an Illinois corporation, has been the principal and substantially the sole account of respondent Joyce Agency, Inc., was responsible for the creation of that corporation, and has controlled its operations including the dissolution proceedings; moreover, the guards and watchmen and the functions involved in the pending litigation have been transferred to Goldblatt Bros., Inc.

The facts relied upon in support of this response and motion are contained in the printed record and in the annexed affidavit of Herman Grant.[1] These facts are summarized below in the Statement and Argument.

STATEMENT

This case arose on a complaint filed by the Secretary of Labor against the Joyce Agency, Inc., praying for an injunction restraining violations of the Fair Labor Standards Act. After trial, on

[1] The original of this affidavit has been filed in the office of the Clerk. A copy is reprinted as an appendix hereto, pp. 20–40, *infra*.

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May 7, 1953, the district court entered a judgment restraining defendant, "its officers, agents, servants, employees, attorneys, and all persons acting or claiming to act in its behalf and interest" from violating the overtime provisions of the Act, and further ordering and decreeing that "the plaintiff recover of and from the defendant his costs and disbursements herein" (R. 119). Defendant filed notice of appeal on July 1, 1953 (R. 120). The court of appeals, on March 29, 1954, reversed the district court's judgment on the ground that respondent's employees were not covered by the Act (R. 125–133). On petition of the Secretary of Labor, this Court granted a writ of certiorari on October 14, 1954 (R. 137). Petitioner's brief on the merits was filed December 9, 1954, and respondent's brief on the merits was filed January 6, 1955.

The affidavit attached to the memorandum filed by respondent in this Court on January 6, 1955, states that Joyce Agency, Inc., ceased doing business on July 1, 1953 (*i. e.*, the same date on which it filed its notice of appeal to the court of appeals), that it duly executed articles of voluntary dissolution, and that a certificate of dissolution was issued to it on October 19, 1953 (*i. e.*, about six months prior to the decision of the court of appeals, and some months prior to the submission of briefs and oral argument in that court).[2] Throughout the pendency of this case in the court of appeals, and

[2] Oral argument was held on March 1, 1954, and Joyce Agency's brief on appeal was filed December 9, 1953

in this Court prior to the memorandum of January 6, 1955, Joyce Agency, Inc., did not inform the petitioner or either court of its dissolution. The brief in opposition to certiorari did not mention or intimate this point. Petitioner was advised for the first time of the dissolution proceedings by respondent's memorandum in this Court of January 6, 1955 (*i. e.*, after the filing of petitioner's brief on the merits and simultaneously with the filing of respondent's brief on the merits).

As indicated in the attachments to the annexed affidavit of Herman Grant, a statement of intent to dissolve by voluntary consent and articles of dissolution were filed on behalf of Joyce Agency, Inc., pursuant to The Business Corporation Act of Illinois (Laws of Illinois 1933, p. 308, pars. 80 and 94; Laws of Illinois 1941, vol. 1, p. 421, par. 1; 1945, p. 544, § 1; Smith-Hurd Illinois Annotated Statutes, §§ 157.80 and 157.94).

Section 157.80 requires as a prerequisite to voluntary dissolution the execution of articles of dissolution setting forth, *inter alia:*

* * * * *

> (c) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.
>
> * * * * *
>
> (e) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree

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which may be entered against it in any pending suit.

Section 157.94 of the same chapter of the Illinois Business Corporation Act provides that—

> The dissolution of a corporation * * * shall not take away or impair any remedy available to or against such corporation, its directors, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name.[3]

The record in the instant case, and the affidavit filed herewith, clearly indicate that Joyce Agency, Inc., has been dominated and controlled by Goldblatt Bros., Inc., and that Goldblatt Bros., Inc., initiated and was responsible for the dissolution proceedings. The intent to dissolve and the articles of dissolution were executed by Robert Gerlich as president of Joyce Agency, Inc., and attested by Gertrude Holter as secretary of Joyce Agency, Inc.

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[3] A comparable provision relating to merger and consolidation provides (Section 157.69 (e)):

"Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place."

(App. *infra*, pp. 22–23, 24, 28–29). Both Robert Gerlich and Gertrude Holter are at present, and for many years have been, employees of Goldblatt Bros., Inc. (App. *infra*, p. 23). Robert Gerlich has been employed by Goldblatt Bros., Inc., at least since 1943 and is currently employed as assistant tax manager. Gertrude Holter has been employed by Goldblatt Bros., Inc., at least since 1936 and is now employed as personal secretary to Goldblatt's tax manager (*infra*, p. 23).

Legal counsel Stanford Clinton of Pritzker, Pritzker and Clinton, representing Joyce Agency, Inc., throughout the pending litigation, has long been retained as legal counsel by Goldblatt Bros., Inc. The same legal counsel represented Goldblatt Bros., Inc., throughout the extended litigation between the Department of Labor and Goldblatt Bros., Inc., under the Fair Labor Standards Act, which involved two trials and three appeals to the court of appeals extending over a period of almost eight years (from April 16, 1940 to March 25, 1948). *Infra*, pp. 23–24. See also respondent's brief on the merits, pp. 6–13.

Goldblatt Bros., Inc., has controlled and actively participated in the operation of Joyce Agency, Inc., since its original organization in 1936, and particularly in the period immediately prior to and during the time involved in the pending litigation (*infra*, pp. 21–22). Throughout the period covered by this litigation, and for many years prior thereto, Goldblatt Bros., Inc., has been the principal and

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substantially the sole account of respondent Joyce Agency, Inc. (*infra*, p. 20; R. 70–71). The guards and watchmen involved in this litigation were transferred from the payroll of respondent to the payroll of Goldblatt Bros., Inc., on or about February 1, 1953, and many of said guards and watchmen have continued in the employ of Goldblatt until the present time (*infra*, pp. 20–21). Prior to their transfer to Goldblatt's payroll, Goldblatt was furnished weekly by Joyce Agency, Inc., with detailed cash disbursement reports and was billed for the total guard and watchmen payroll, plus the social security and unemployment compensation contributions due on the payroll, plus approximately 2½% for services. All of the books of Joyce Agency, Inc., were audited by an auditor in the employ of Goldblatt (*infra*, pp. 21–22; R. 53, 113).

Joyce Agency, Inc., was originally organized by Goldblatt to provide Goldblatt with a detective and watchman service. Goldblatt furnished the necessary capital for its organization, and controlled the stock of Joyce Agency, Inc. throughout its corporate existence (*infra*, p. 21). The officers and directors of Joyce Agency, prior to the initiation of dissolution proceedings, were also closely affiliated with Goldblatt. The former president-treasurer of Joyce (Edwin G. Boltz), whose affidavit is annexed to the memorandum filed in this Court on January 6, 1955, handled the labor relations for Goldblatt Bros., Inc. (R. 70). The former sec-

retary and office manager for Joyce, Marcella Main, worked for Boltz in his labor relations business, receiving part of her salary from Boltz and part from respondent Joyce Agency, Inc. (*infra*, p. 22; R. 70). One of the partners in the law firm of Pritzker, Pritzker and Clinton (which has been representing Joyce Agency, Inc., throughout the present litigation) was one of the original incorporators of Goldblatt Bros., and two of the partners have owned stock in Goldblatt and have been officers and directors of Goldblatt (*infra*, pp. 23–24).

The law firm of Pritzker, Pritzker and Clinton also represents Joyce Agency, Inc., in two civil actions instituted by employees and pending in the United States District Court for the Northern District of Illinois, for unpaid overtime compensation, liquidated damages, and attorneys' fees amounting to more than $8,000.00, pursuant to the provisions of Section 16 (b) of the Fair Labor Standards Act of 1938, as amended (29 U. S. C., 201 *et seq.*). These employee suits involve issues of law identical to those tendered in the instant case. On April 13, 1953, both cases (*Chrysler* v. *Joyce Agency, Inc.*, Civil No. 50 C 10, and *Sullivan* v. *Joyce Agency, Inc.*, Civil No. 51 C 114) were, by order of District Judge Sam J. Perry, placed on the passed case calendar pending final determination of the instant case (*infra*, pp. 25–26).

The brief on the merits, filed in this Court, on January 6, 1955, on behalf of respondent by Pritzker, Pritzker and Clinton, still asserts that the

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guards and watchmen working at the Goldblatt warehouses are not within the coverage of the Act.

The record does not show what, if any, provision has been made for satisfaction of the injunction decree or of the judgment for costs and disbursements entered by the district court against Joyce Agency, Inc., in the pending case. Nor does the record show what, if any, provision has been made for the satisfaction of any judgment that may be entered against Joyce Agency, Inc., in the pending employee suits. See Section 157.80 (e) of the Illinois Business Corporation Act, quoted *supra*, pp. 4–5.

ARGUMENT

Respondent, while asserting that its dissolution has made this action moot, does not aver that the action has abated by its dissolution or that it is without capacity to sue or be sued. Indeed, in view of its own conduct in proceeding with its appeal subsequent to its dissolution (*supra*, p. 3), respondent "is hardly in a position to assert that it is non-existent and incapable of maintaining and defending pending suits." See *Pease* v. *Rathbun-Jones Engineering Co.*, 243 U. S. 273, 277.

Under the plain terms of the Illinois Corporation law, respondent still exists for purposes of litigating "any remedy" and any pending "*action or proceeding* by or against the corporation" "for any right or claim existing, or any liability incurred, prior to such dissolution * * *" (Section 157.94, quoted *supra*, p. 5) (emphasis added).

Moreover, respondent's certificate of dissolution was conditioned on its representation that "adequate provision has been made for the satisfaction of any judgment, *order, or decree* which may be entered against it in any pending suit" (Section 157.80, quoted *supra*, pp. 4–5). [Emphasis added.] It is therefore plain, we submit, that this action has not abated by the dissolution and that respondent still has capacity to be sued and to have an effective judgment rendered against it.

It is equally clear that the case is not moot, for the very employment practices which are the subject of the suit are still being continued by the real party in interest, Goldblatt Bros., Inc., which actively participated in and indeed controlled these practices even prior to the dissolution of respondent. There is thus a real and existing controversy in which effectual relief may be granted pursuant to respondent's responsibility under its articles of dissolution and also by reason of Section 65 (d) of the Federal Rules of Civil Procedure.[4]

Respondent prosecuted the appeal in this case on the assumption that the action had not abated and that the case was not moot. We can only presume that the sole purpose for its assertion of mootness at this late date is to forestall this Court's de-

[4] Section 65 (d) provides (in pertinent part):

"Every order granting an injunction and every restraining order * * * is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and *upon those persons in active concert or participation with them* who receive actual notice of the order by personal service or otherwise." [Emphasis added.]

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termination of a live issue and to avoid the entry of a judgment which would be binding on Goldblatt Bros., Inc., and which would serve as a precedent in the pending actions by employees against respondent. Such an apparent attempt to frustrate the judicial process and the enforcement of an important remedial Act of Congress need not and should not be indulged.

While we believe that a judgment on the merits against respondent Joyce Agency, Inc., would provide effectual relief against the same practices by Goldblatt Bros., Inc., any doubt can be resolved by joining or substituting Goldblatt Bros., Inc., as a party-respondent. For the reasons we have stated and will discuss more fully below, we submit that the Court should proceed with the determination of the merits of this case and should grant this motion to join or substitute Goldblatt Bros., Inc., as a party.

I

THIS ACTION HAS NOT ABATED AGAINST JOYCE AGENCY, INC.

It is well settled that although a corporate entity may be dissolved for most purposes, it may "yet have enough life remaining to litigate its actions. All that is necessary is a statute so providing." *Defense Supplies Corporation* v. *Lawrence Warehouse Co.*, 336 U. S. 631, 634–635. The Illinois Corporation law in plain terms provides "enough life" in a dissolved corporation to preserve "any remedy" against such corporation "for *any right*

or claim existing, or *any liability* incurred, prior to such dissolution if *action or other proceeding* thereon is commenced within two years after the date of such dissolution," and to permit the prosecution or defense of "any such action or proceeding" by the dissolved corporation "in its corporate name" (Section 157.94, quoted *supra*, p. 5). [Emphasis added.] Moreover, under its articles of dissolution, respondent remains responsible "for the satisfaction of *any judgment, order, or decree* which may be entered against it in any pending suit" (Section 157.80, quoted *supra*, pp. 4–5). [Emphasis added.]

There is no question that this action was instituted and pending prior to the dissolution of respondent, and indeed two years has not yet expired since its certificate of dissolution was issued on October 19, 1953.

The language of the Illinois statute continuing the corporate life for purposes of litigation is plain and should be applied in this case. It has been repeatedly held that such statutes "prolonging the existence of a dissolved corporation are remedial and should be given a liberal construction." *Eastman, Gardiner & Co.* v. *Warren*, 109 F. 2d 193 (C. A. 5); *Bahen & Wright* v. *Commissioner of Internal Revenue*, 176 F. 2d 538 (C. A. 4): "Statutes of this type are broadly remedial and should be liberally construed. * * * The word 'proceeding' is obviously broader than action or suit and should be given full effect in order to achieve the fundamental

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purpose of the statute." (*id.* at 539); *U. S.* v. *P. F. Collier & Son Corp.*, 208 F. 2d 936 (C. A. 7), holding that—

"* * * the word 'suit' or the word 'action' standing alone might reasonably be held as not including a criminal prosecution, but *when the word 'proceeding' is added we think a combination is presented which is well near inclusive of all forms of litigation.* * * * The words 'any action, suit, or proceeding' in their ordinary and generally accepted meaning and use embrace, so we think, all forms of litigation, civil, criminal, bankruptcy and admiralty. The words carry such a plain meaning that they are hardly open to construction, and their employment leaves no room to speculate on the legislative intent" (*id.* at 939, 940). [Emphasis added.] See also: *National Labor Relations Bd.* v. *Timken Silent A. Co.*, 114 F. 2d 449, 450 (C. A. 2); *Helvering* v. *South Penn Oil Co.*, 68 F. 2d 420, 424 (C. A. D. C.).

The terms "proceeding," "action," and "judgment, order, or decree," used in Sections 157.94 and 157.80 of the Illinois Corporation Law, are commonly used to include or to characterize suits for injunctions. Under Rules 1 and 2 of the Federal Rules of Civil Procedure, for example, suits in equity are included within the term "civil actions." "Action" is specifically used in conjunction with injunction in Rule 62 (a) as "action for an injunction" and in Rule 65 (e) as actions to enjoin. "Judgment" as used in the Rules explicitly "includes a decree and any order from which an ap-

peal lies" (Rule 54 (a)), and Rule 62 (c) uses the term "judgment granting * * * an injunction."[5]

This is not a case, therefore, in which the action has abated or in which the respondent before this Court is without capacity to be sued. Compare *Walling* v. *James V. Reuter, Inc.*, 321 U. S. 671, where a corporate respondent had been dissolved under the Louisiana law which contained no provision for the continued existence of the corporate life even for purposes of suit. The reasons which deterred this Court from proceeding to a determination of the merits in the *Reuter* case are not here present. The instant case differs from *Reuter* in two significant respects: (1) the applicable State statute does provide continuing life in the dis-

[5] It may be noted that there are no Illinois state court decisions construing the present language of the Illinois law. In the case of *Galter* v. *Federal Trade Commission*, 186 F. 2d 810 (C. A. 7), however, the court of appeals construed the present language as being no broader than the previous narrow language of the Illinois statute which preserved the corporate life "for the purpose only of collecting the debts due said corporation, and selling and conveying the property and effects thereof." On what appears to be a plainly erroneous assumption that the present broader language of the Illinois law did not intend to continue the existence of a dissolved corporation except for purposes of winding up its affairs, the *Galter* decision held that a dissolved Illinois corporation was not "subject to an injunction against acts to be performed in the future, especially where, as here, the acts sought to be enjoined are in no way related to the winding up of the corporate affairs * * *" 186 F. 2d at 815–816. This narrow construction excluding proceedings for injunctions from the present broad statutory language seems particularly unwarranted in view of the preservation in the Illi-

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solved corporation for purposes of litigation, and (2) a specific motion to join or substitute the real party in interest as party-respondent is here being made.

II

THE ACTION IS NOT MOOT AND SHOULD BE DETERMINED BY THIS COURT ON THE MERITS, WITH GOLDBLATT BROS. INC. JOINED OR SUBSTITUTED AS PARTY-RESPONDENT

Respondent's only contention is that the action has become moot, a plainly untenable contention. For this Court has held, specifically with reference to an injunction action to restrain violations of the Fair Labor Standards Act, that even where an action has abated because of the absence of any stat-

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nois law of the dissolved corporation's responsibility for satisfaction of a "decree" as well as "any judgment" and "order" (Section 157.80 (e), quoted *supra*, pp. 4–5).

The *Galter* decision also seems plainly inconsistent with the subsequent decision of the Seventh Circuit, about three years later, construing similar language of the Delaware statute in the case of *U. S.* v. *Collier & Son*, *supra*, p. 13.

Moreover, the instant case differs from the *Galter* case in at least three respects: (1) the acts here sought to be enjoined might well be regarded as related to the winding up of the corporate affairs inasmuch as respondent's employees and functions have been transferred to a closely identified company which is continuing the practices here in issue; (2) a judgment and decree was entered in the instant case *prior to* the dissolution of the corporation, whereas the order in the *Galter* case was not entered until *after* the corporate dissolution; and (3) the judgment in the instant case includes, in addition to an injunction, a monetary judgment for costs and disbursements.

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ute prolonging the existence of a dissolved corporation for purposes of litigation, it does not follow that the action or the issues have become moot. *Walling* v. *James V. Reuter, Inc.*, 321 U. S. 671, 674, 676. "Not only is such an injunction enforcible by contempt proceedings against the corporation, its agents and officers and those individuals associated with it in the conduct of its business, * * * but it may also, in appropriate circumstances, be enforced against those to whom the business may have been transferred, whether as a means of evading the judgment or for other reasons. The vitality of the judgment in such a case survives the dissolution of the corporate defendant. * * * And these principles may be applied in fuller measure in furtherance of the public interest, which here the petitioner represents, than if only private interests were involved." *Id.* at 674–675.*

Under the circumstances of the instant case, the disposition which this Court made of the *Reuter* case would not adequately protect petitioner's rights nor the public interest in the enforcement of the Fair Labor Standards Act. A determination on the merits by this Court is necessary not only to prevent frustration of the appellate procedure but

* Neither of the cases relied upon in respondent's memorandum is pertinent. Both of those cases were suits to enjoin Federal officers from seizing or interfering with plaintiffs' property, where the actions became moot because the properties had been returned by the Government to the owners. *Commercial Cable Co.* v. *Burleson*, 250 U. S. 360; *Montgomery Ward & Co.* v. *United States*, 326 U. S. 690.

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to prevent what appears to be an attempt by respondent, and by the real party in interest which dominates respondent, to block enforcement of the judgment entered in this case and to delay the enforcement of the Act by prolonging litigation over the issues here presented. It is apparent from the brief on the merits filed on behalf of Joyce Agency, Inc., that, absent a determination on the merits by this Court, there will be a continued or renewed assertion that the Act is inapplicable to the guards and watchmen transferred to the payroll of Goldblatt Bros. It is also apparent that, unless this Court determines the merits, the employees whose suits against Joyce Agency, Inc., have been delayed pending final determination of the instant case will be deprived of a decision which would serve as a binding precedent, and will therefore be subjected to continuing extended litigation.

As this Court stated in the *Reuter* case, even in the absence of jurisdiction to consider the merits because of the respondent's incapacity, the Court "may make such disposition of the whole case as justice may require." 321 U. S. at 677. The very least remedy which justice requires is that the judgment of the court of appeals be vacated and the judgment of the district court reinstated, as though respondent Joyce Agency, Inc., had taken no appeal. *Walling* v. *James V. Reuter Co., supra,* at 677–678. In the instant case, however, this remedy does not adequately protect petitioner nor the public interest, and relief should not be so limited.

The disposition which justice requires in the instant case, we believe, is that this Court proceed with a determination of the merits and join or substitute Goldblatt Bros., Inc., as a party-respondent. While this Court's rules do not provide for joinder or substitution for a dissolved corporation, such procedure is suggested by the *Reuter* decision (321 U. S. at 675) and would be in accord with Rules 21, 25 (c), and 65 (d) of the Federal Rules of Civil Procedure. Goldblatt Bros., Inc., is, and throughout the period involved in this litigation has been, "in active concert or participation" with respondent in the acts sought to be enjoined. Under Rule 65 (d) (quoted *supra,* p. 10, n. 4), Goldblatt would doubtless be bound by the injunction decree here sought. Under Rule 21, "parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." And under Rule 25 (c), "in case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred *to be substituted in the action or joined with the original party.*" [Emphasis added.] Joinder or substitution seems particularly appropriate in the instant case in view of the fact that the employees and functions involved in this litigation have been transferred to Goldblatt Bros., Inc., and it is evident that Goldblatt, unless made a party,

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will contest the application to it of any judgment that may be entered in the instant action.

CONCLUSION

It is respectfully submitted that respondent's claim of mootness should be rejected, and that Goldblatt Bros., Inc., should be ordered joined or substituted as party-respondent.

SIMON E. SOBELOFF,
Solicitor General.

STUART ROTHMAN,
Solicitor,

BESSIE MARGOLIN,
Assistant Solicitor,
United States Department of Labor.

JANUARY 1955.

APPENDIX

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1954

No. 230

JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

JOYCE AGENCY, INC., RESPONDENT

Affidavit

STATE OF ILLINOIS,
County of Cook, ss:

HERMAN GRANT, being first duly sworn, deposes and says that he is, and at all times during the pendency of the above-styled cause was, employed by the United States Department of Labor as Regional Attorney at Chicago, Illinois; and upon information and belief further says that:

1. Neither petitioner nor the Court of Appeals was notified of the dissolution of respondent Joyce Agency, Inc., until the filing of the Memorandum by respondent in this Court on January 6, 1955:

2. Goldblatt Bros., Inc., for many years and throughout the period covered by this litigation has been the principal and substantially the sole account of respondent Joyce Agency, Inc.

3. The guards and watchmen involved in the pending litigation were transferred from the pay

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roll of respondent Joyce Agency, Inc., to the pay roll of Goldblatt Bros., Inc., on or about February 1, 1953, and many of the said guards and watchmen have continued in the employ of Goldblatt Bros., Inc., until the present time.

4. Since their transfer from the pay roll of respondent Joyce Agency, Inc., to the pay roll of Goldblatt Bros., Inc., as aforesaid, the guards and watchmen referred to in paragraph 3 hereof have worked in excess of 40 hours during many workweeks without receiving compensation for their employment in excess of 40 hours during such workweeks at rates not less than one and one-half times the regular rates at which they are employed.

5. Respondent Joyce Agency, Inc., prior to an article of amendment filed on November 26, 1947, was known as Joyce Detective Agency, Inc. Joyce Detective Agency, Inc., incorporated under the laws of the State of Illinois on November 13, 1936, was formed to provide a detective and watchman service for Goldblatt Bros., Inc. Goldblatt Bros., Inc., furnished the necessary capital to organize said corporation. Goldblatt Bros., Inc., caused the stock certificate representing the stock in Joyce Detective Agency, Inc., to be issued to one of its nominees, who, in turn assigned said stock certificate in blank and delivered same to the custody of Goldblatt Bros., Inc. Goldblatt Bros., Inc., has retained ownership and control of said stock during the corporate existence of Joyce Agency, Inc.

6. Prior to and during the period of the pending litigation in the trial court, Goldblatt Bros., Inc., was furnished weekly with detailed cash disbursement reports and was billed for the total detective, day guard, and night watchman pay roll, plus 3.6

per cent of the gross for social security and unemployment compensation contributions, plus approximately 2½ percent for services. Goldblatt Bros., Inc., issued its check to Joyce Agency, Inc., for the total amount thus billed to it by Joyce Agency, Inc. An auditor from Goldblatt Bros., Inc., audited all of the books of Joyce Agency, Inc.

7. The former president-treasurer of Joyce Agency, Inc., Edwin G. Boltz, whose affidavilt dated January 4, 1955, is annexed to the Memorandum filed in this Court on behalf of Joyce Agency, Inc., simultaneously carried on a labor relations business under the name of Boltz and Boltz, which handled the labor relations for Goldblatt Bros., Inc. (R. 70).

8. The former secretary and office manager for respondent Joyce Agency, Inc., Marcella Main, also worked for Boltz and Boltz, receiving $65.00 a week of her compensation from Joyce Agency, Inc., and $10.00 a week from Boltz and Boltz.

9. On and after July 1, 1953, and at all times referred to in paragraphs 5, 6, 7, 8 and 9 of the affidavit of Edwin G. Boltz dated January 4, 1955, Edwin G. Boltz was not the president of respondent Joyce Agency, Inc.; nor was he an officer or director of respondent Joyce Agency, Inc. On and after July 1, 1953, and at all times referred to in paragraphs 5, 6, 7, 8 and 9 of the said affidavit, Robert Gerlich and Gertrude Holter were the officers and directors of respondent Joyce Agency, Inc.

10. At the time of the filing of the Statement of Intent to Dissolve Joyce Agency, Inc., and at the time of the issuance of the certificate of dissolution, the officers and directors of respondent Joyce Agency, Inc., were Robert Gerlich, president, and

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Gertrude Holter, secretary, both employees of Goldblatt Bros., Inc.

11. Robert Gerlich and Gertrude Holter are, and for many years past have been, employees of Goldblatt Bros., Inc. Robert Gerlich is, and has been, since at least 1943, employed by Goldblatt Bros., Inc., in its central offices located at 333 South State Street, Chicago, Illinois. Gertrude Holter is, and has been, since at least 1936, employed by Goldblatt Bros., Inc., in its central offices located at 333 South State Street, Chicago, Illinois. William A. Goldman is, and has been, since at least 1947, employed by Goldblatt Bros., Inc., in its central offices located at 333 South State Street, Chicago, Illinois. Robert Gerlich is employed as assistant tax manager, Gertrude Holter is employed as personal secretary to William A. Goldman, and William A. Goldman is employed as tax manager by Goldblatt Bros., Inc.

12. Joyce Agency, Inc., and Goldblatt Bros., Inc., have for many years and throughout the pending litigation retained the same legal counsel, Stanford Clinton of Pritzker, Pritzker & Clinton, who has represented Joyce Agency, Inc., throughout the present litigation and also represented Goldblatt Bros., Inc., throughout the extended litigation between the Department of Labor and Goldblatt Bros., Inc., under the Fair Labor Standards Act, which involved two trials and three appeals to the Court of Appeals extending over a period of almost 8 years (from April 16, 1940 to March 25, 1948). See *Walling* v. *Goldblatt Bros.*, 128 F. (2d) 778 (C. A. 7), certiorari denied, 318 U. S. 757; 152 F. (2d) 475 (C. A. 7), certiorari denied, 328 U. S. 854; 166 F. (2d) 387 (C. A. 7). Abram N. Pritzker,

one of the partners in the law firm of Pritzker, Pritzker & Clinton, was one of the original incorporators of Goldblatt Bros., Inc., when it was first organized in 1928. In the articles of incorporation of Goldblatt Bros., Inc., he is shown as owning 50 shares of stock. Nicholas Pritzker is also a partner in said law firm, and he is likewise shown in the said articles of incorporation of Goldblatt Bros., Inc., as owning 50 shares of stock. Abram Pritzker and Nicholas Pritzker have been officers and directors of Goldblatt Bros., Inc.

13. On September 28, 1953, Robert Gerlich and Gertrude Holter, as president and secretary, respectively, of respondent Joyce Agency, Inc., executed the statement of intent to dissolve referred to in paragraph 6 of the said affidavit of Edwin G. Boltz dated January 4, 1955, and on the same date, to wit, September 28, 1953, Robert Gerlich acknowledged that he signed said document as president of respondent Joyce Agency, Inc., and declared under oath that the statements therein contained are true, before William A. Goldman, notary public in and for Cook County, Illinois.

14. On October 16, 1953, Robert Gerlich and Gertrude Holter, as president and secretary, respectively, of respondent Joyce Agency, Inc., executed the articles of dissolution referred to in paragraph 7 of the said affidavit of Edwin G. Boltz dated January 4, 1955. Robert Gerlich acknowledged that he signed said document as president of respondent Joyce Agency, Inc., and declared under oath that the statements therein contained are true, before William A. Goldman, notary public in and for Cook County, Illinois, said acknowledgment and declaration bearing the date October 6, 1953.

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15. Under the file mark of the Illinois Secretary of State stamped on the back of the statement of intent to dissolve, referred to in paragraph 6 of the said affidavit of Edwin G. Boltz dated January 4, 1955, the following words and figures are inscribed:

Please mail to
B. Rosencranz
333 S. State
Legal
Chgo. Ill

Bernard Rosencranz is an attorney employed on the legal staff of Goldblatt Bros., Inc. The central offices of Goldblatt Bros., Inc., are located at 333 South State Street, Chicago, Illinois.

16. The name of Eugene Tomczak and the address 333 S. State Street, Chicago, Illinois, have been typewritten and afterwards partially erased under both article 2 and article 3 of the statement of intent to dissolve, referred to in paragraph 6 of the said affidavit of Edwin G. Boltz dated January 4, 1955, wherein the names and addresses of the officers and directors of the corporation are required to be set forth. Eugene Tomczak was employed by respondent Joyce Agency, Inc., as supervisor of all day guards and detectives prior to about February 1, 1953, when he was transferred to the pay roll of Goldblatt Bros., Inc. The records of the Secretary of State of Illinois show that the said Eugene Tomczak was vice-president and a director of respondent Joyce Agency, Inc., during the year 1953.

17. Respondent Joyce Agency, Inc., is defendant in two civil actions instituted by employees and pending in the United States District Court for the

Northern District of Illinois, wherein plaintiffs demand judgments for unpaid overtime compensation, liquidated damages, and attorneys' fees amounting to more than $8,000.00, pursuant to the provisions of section 16 (b) of the Fair Labor Standards Act of 1938, as amended (29 U. S. C., 201 *et seq.*). The said actions involve issues of law identical to those tendered in the above-styled cause. On April 13, 1953, both cases (*Chrysler* v. *Joyce Agency, Inc.*, Civil No. 50 C 10, and *Sullivan* v. *Joyce Agency, Inc.*, Civil No. 51 C 114) were by motion order of the Honorable Sam J. Perry, D. J., placed on the passed case calendar pending final determination of the above-styled cause.

18. Annexed hereto are duly certified photostatic copies of the following documents referred to herein and in the said affidavit of Edwin G. Boltz dated January 4, 1955:

(a) Statement of Intent to Dissolve by Voluntary Consent of Shareholders Pursuant to Section 75 of "The Business Corporation Act," referred to in paragraph 6 of the said affidavit of Edwin G. Boltz and in paragraphs 13, 15, and 16 hereof as the "statement of intent to dissolve." Said document is marked Exhibit A for identification.

(b) Articles of Dissolution Pursuant to Section 80 of "The Business Corporation Act," with Certificate annexed, referred to in paragraphs 7 and 8 of the said affidavit of Edwin G. Boltz. Said document is marked Exhibit B for identification.

(c) Dockets showing statuses of *George Chrysler* v. *Joyce Agency, Inc.*, Civil No. 50 C 10, and *Eugene D. Sullivan* v. *Joyce Agency, Inc.*, Civil No. 51 C 114, pending in the United States District Court for the

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Northern District of Illinois. Said documents are marked Exhibits C–1 and C–2, respectively.

/s/ Herman Grant.
HERMAN GRANT.

Subscribed and sworn to before me, the undersigned authority, in my aforesaid jurisdiction on January 14, 1953.

/s/ GEORGE J. CEURNKA,
Notary Public.

My commission expires June 29, 1957.

BOOK2330 PAGE 62

Date Paid 9-30-53
Filing Fee $
Clerk VEL

(TO BE FILED IN DUPLICATE)

STATEMENT OF INTENT TO DISSOLVE BY VOLUNTARY CONSENT OF SHAREHOLDERS PURSUANT TO SECTION 75 OF "THE BUSINESS CORPORATION ACT" OF

JUDGE SHOES, INC.,

To CHARLES F. CARPENTIER,
Secretary of State,
Springfield, Illinois.

The undersigned corporation, for the purpose of dissolving the corporation, and pursuant to the provisions of Section 75 of "The Business Corporation Act" of the State of Illinois, hereby executes the following statement of intent to dissolve.

Article 1. The name of the corporation is JUDGE SHOES, INC.

Article 2. The names and respective addresses, including street and number, if any, of its officers are:

Name	Number	Street	City	State
Robert Gerlich	14736 S. Normal Avenue		Riverdale	Illinois
Gertrude Reiter	2010 Bradley Pl.		Chicago	Illinois

Article 3. The names and respective addresses, including street and number, if any, of its directors are:

Name	Number	Street	City	State
Robert Gerlich	14736 S. Normal Avenue		Riverdale	Illinois
Gertrude Reiter	2010 Bradley Pl.		Chicago	Illinois

Article 4. The agreement signed by all of the shareholders of record of the corporation, consenting to its dissolution, is as follows:

"We, the undersigned being all of the shareholders of the corporation do hereby agree that this corporation be dissolved and the proper officers of this company are hereby authorized and directed to take such steps as are necessary to dissolve the same."

A

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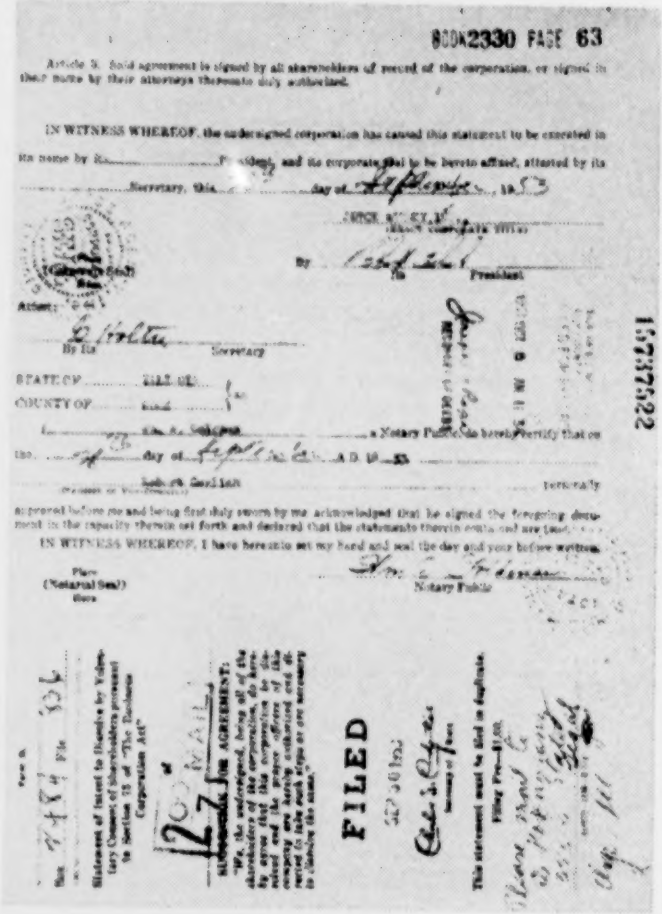

BOOK2330 PAGE 63

Article 9. Said agreement is signed by all shareholders of record of the corporation, or signed in their name by their attorneys thereunto duly authorized.

IN WITNESS WHEREOF, the undersigned corporation has caused this statement to be executed in its name by its ... President, and its corporate seal to be hereto affixed, attested by its ... Secretary, this ... day of ... A.D. 19...

By ... President

Attest: ... Secretary

STATE OF ... SS.

COUNTY OF ...

I, ... a Notary Public do hereby certify that on the ... day of ... A.D. 19... personally appeared before me and being first duly sworn by me acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Notary Public

Place (Notarial Seal) Here

Form A

No. ... File ...

Statement of Intent to Dissolve by Voluntary Consent of Shareholders pursuant to Section 13 of "The Business Corporation Act"

12 Mail

AGREEMENT

"We, the undersigned, being all of the shareholders of the corporation, do hereby agree that this corporation be dissolved and the proper officers of the corporation are hereby authorized and directed to do all such things as are necessary to dissolve the same."

FILED

SEP 30 1983

Secretary of State

This statement must be filed in duplicate. Filing Fee—$10.00.

1533622

STATE OF ILLINOIS, }
County of Cook } ss.

I, JOSEPH F. ROPA, Recorder of Deeds, and Keeper of the Records of said Recorder of Deeds, in and for said County, in the State aforesaid, Do Hereby Certify, that the following is a true and correct photographic copy of the record of a certain Instrument filed in said Office the Sixth day of October A. D. 1953 as Document No. 15732522 and recorded in Book 2230 of Records, at Page 62

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Chicago, this Thirteenth day of January A. D. 19 54.

Recorder of Deeds

B

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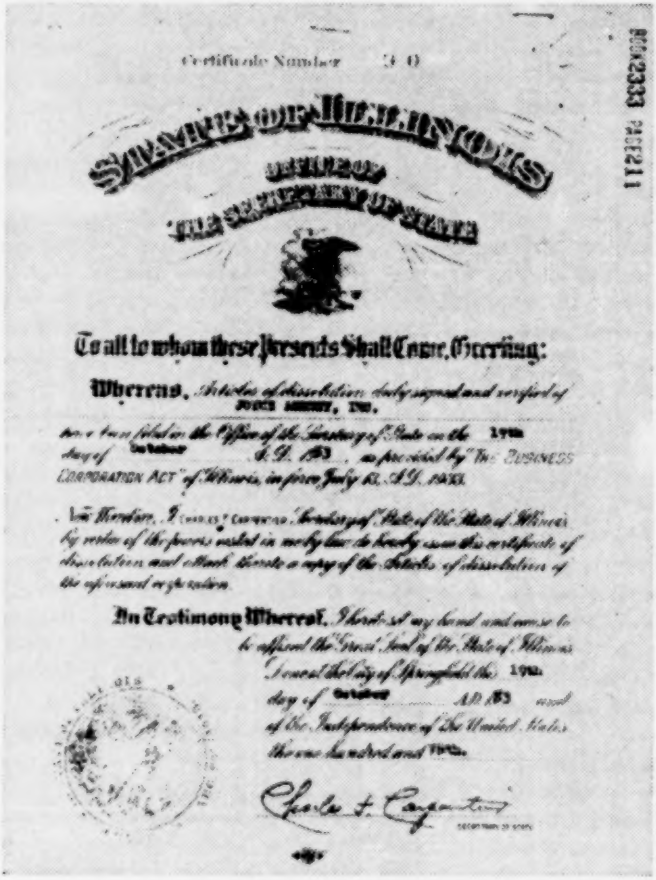

Certificate Number 340

STATE OF ILLINOIS

OFFICE OF

THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

Whereas, Articles of dissolution, duly signed and verified of JOHN DEERE, INC.

have been filed in the Office of the Secretary of State on the 17th day of October A.D. 1983, as provided by "THE BUSINESS CORPORATION ACT" of Illinois, in force July 61, A.D. 1983.

Now Therefore, I, JIM EDGAR, Secretary of State of the State of Illinois by virtue of the powers vested in me by law do hereby issue this certificate of dissolution and attach thereto a copy of the Articles of dissolution of the aforesaid corporation.

In Testimony Whereof, I hereunto set my hand and cause to be affixed the Great Seal of the State of Illinois. Done at the City of Springfield this 17th day of October A.D. 1983 and of the Independence of the United States the one hundred and 19th.

Secretary of State

B00233 B00211

BOOK2333 PAGE212

Form 9

Date Paid 10-19-53
Filing Fee $ 1
Clerk 102 L

Form F.

(These articles to be filed in triplicate.)

ARTICLES OF DISSOLUTION PURSUANT TO SECTION 98 OF "THE BUSINESS CORPORATION ACT"

OF

JUDGE AGENCY, INC., a corporation

TO CHARLES F. CARPENTIER,
Secretary of State,
Springfield, Illinois

The undersigned corporation, for the purpose of dissolving, and pursuant to the provisions of "The Business Corporation Act" of the State of Illinois relating to the dissolution of said corporation, hereby executes the following articles of dissolution:

Article 1. Name of corporation is Judge Agency, Inc.,

Article 2. On the 30th day of September, A.D. 19 53 the corporation filed with the Secretary of State, and on the 8th day of October, A.D. 19 53 with the Recorder of Deeds of the County in which the registered office of the corporation is situated, a statement of intent to dissolve.

*Article 3. All debts, obligations and liabilities of the corporation have been paid and discharged, or that adequate provision has been made therefor.

*Article 4. All the remaining property and assets of the corporation have been distributed among its shareholders, in accordance with their respective rights and interests.

*Article 5. There are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

(over)

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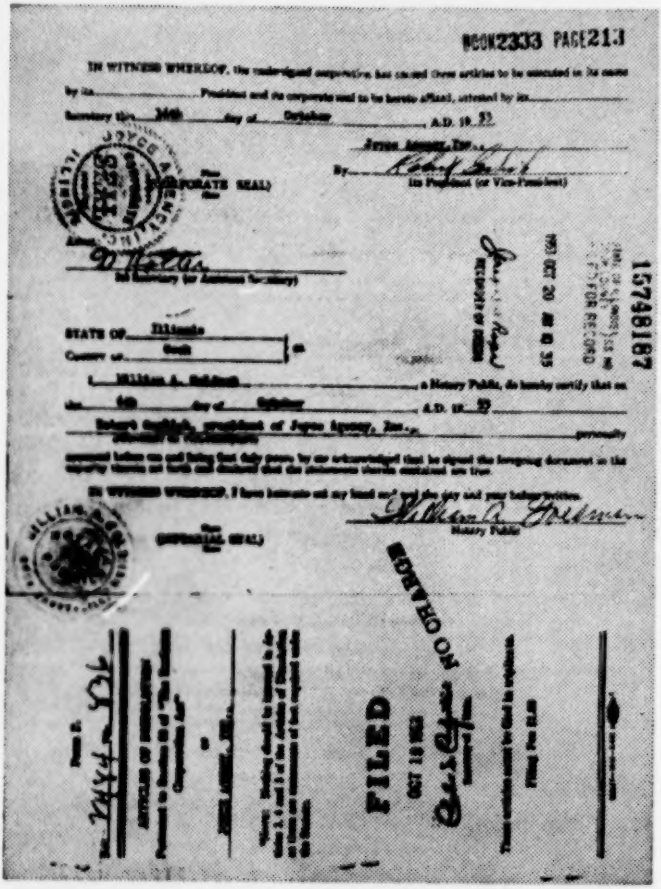

BOOK2333 PAGE213

IN WITNESS WHEREOF, the undersigned corporation has caused these articles to be executed in its name by its President and its corporate seal to be hereto affixed, attested by its Secretary this 14th day of October A.D. 19 57

Joyce Agency, Inc.

By (Its President (or Vice-President))

(CORPORATE SEAL)

Attest:

(Its Secretary (or Assistant Secretary))

STATE OF Illinois
County of Cook } ss.

I, William A. Goldsmith, a Notary Public, do hereby certify that on the 14th day of October A.D. 19 57

Robert Goldish, president of Joyce Agency, Inc., personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me and being first duly sworn, by me acknowledged that he signed the foregoing document as the voluntary act of said corporation and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal.

William A. Goldsmith
Notary Public

(NOTARIAL SEAL)

15748187

RECORDED FOR RECORD
1957 OCT 20 AM 8 55

FILED
OCT 18 1957
SECRETARY OF STATE
STATE OF ILLINOIS

STATE OF ILLINOIS, }
County of Cook. } ss.

I, JOSEPH F. ROPA, Recorder of Deeds, and Keeper of the Records of said Recorder of Deeds, in and for said County, in the State aforesaid, Do Hereby Certify, that the following is a true and correct photographic copy of the record of a certain Instrument filed in said Office the Twentieth day of October A. D. 19 52 as Document No. 15748187 and recorded in Book 2333 of Records, at Page 221.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Chicago, this Thirteenth day of January A. D. 19 55.

Recorder of Deeds.

C–1

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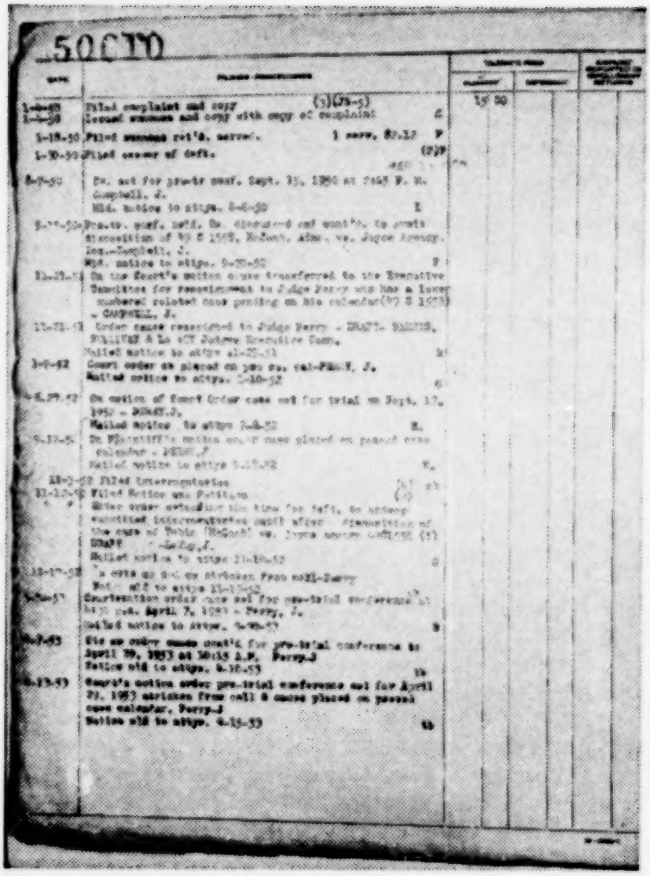
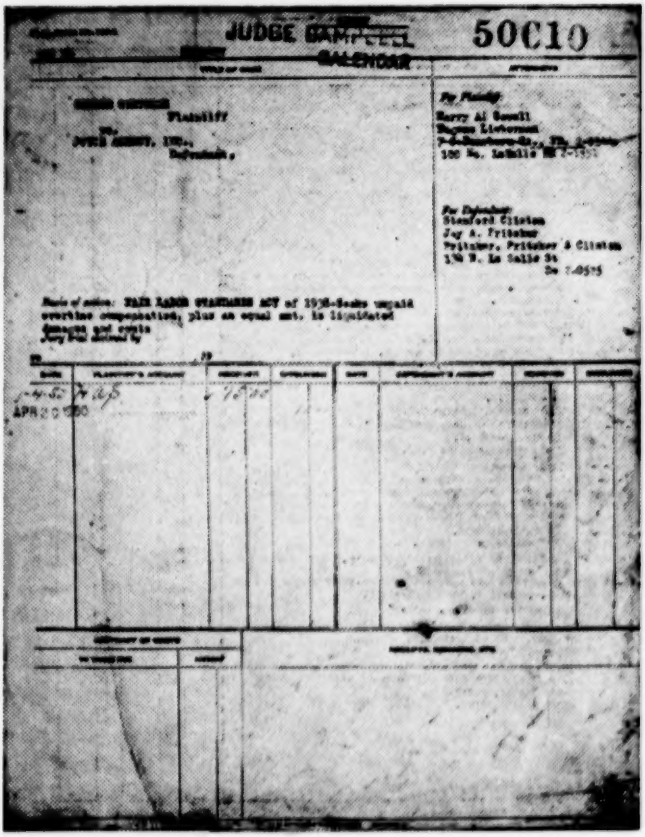


50 C 170

Date	Proceedings	Judgment	Satisfaction	Amount of Judgment and Costs
1-6-50	Filed complaint and copy (1)(75-5)			35 00
1-6-50	Issued summons and copy with copy of complaint			
1-18-50	Filed summons ret'd. served. 1 serv. $2.12			
1-30-50	Filed answer of defts. (pp)			
8-7-50	Stip. ext for pre-tr conf. Sept. 15, 1950 at 2:45 P. M. Campbell, J.			
	Mailed notice to attys. 8-8-50			
9-14-50	Pre-tr. conf. held. Ds. discovered and contds. to pre-trial discussion of 50 C 1508, McGrath, Atty. Gen. vs. Joyce Armory, Inc.-Campbell, J.			
	Mailed notice to attys. 9-20-50			
12-21-50	On the Court's motion cause transferred to the Executive Committee for reassignment to Judge Perry who has a lower numbered related case pending on his calendar(50 C 1508) - CAMPBELL, J.			
12-21-50	Order cause reassigned to Judge Perry - DRAFT, DAIRIE, PHILLIPS & La OCT Judges Executive Comm.			
	Mailed notice to attys 12-22-50			
3-9-52	Court order ds placed on pre-tr. cal-Perry, J.			
	Mailed notice to attys. 3-10-52			
4-8-52	On motion of Court Order case set for trial on Sept. 15, 1952 - Perry, J.			
	Mailed notice to attys 4-8-52			
9-12-52	On Plaintiff's motion order case placed on peanut case calendar - Perry, J.			
	Mailed notice to attys 9-17-52			
10-2-52	Filed Intervenorstoria (pp)			
11-12-52	Filed Notice and Petition (pp)			
	Enter order extending the time for defts. to answer amended intervenorstoria until after disposition of the case of John McGrath vs. Joyce Armory Company (1) Draft - Perry, J.			
	Mailed notice to attys 11-20-52			
12-17-52	Order up writ of Mandamus from mail-Perry			
	Mot. of D to stay 12-17-52			
2-6-53	Continuation order case set for pre-trial conference at 2:30 p.m. April 7, 1953 - Perry, J.			
	Mailed notice to Atty. 2-10-53			
4-7-53	Stip and order cause set for pre-trial conference to April 28, 1953 at 10:15 A.M. Perry,J			
	Notice sld to attys. 4-10-53			
4-13-53	Court's motion order pre-trial conference set for April 28, 1953 striken from call & cause placed on peanut case calendar, Perry,J			
	Notice sld to attys. 4-15-53			



JUDGE
CALENDAR
50C10

Plaintiff
vs.
Defendant,

For Plaintiff
Harry Al Cowell
Pugnus Livironment
100 No. LaSalle

For Defendant
Stanford Clinton
Jay A. Pritzker
Pritzker, Pritzker & Clinton
140 S. La Salle St

Nature of suits: FAIR LABOR STANDARDS ACT of 1938-Seeks unpaid overtime compensation, plus an equal amt. in liquidated damages and costs
Jury Demanded

APR 20 1950

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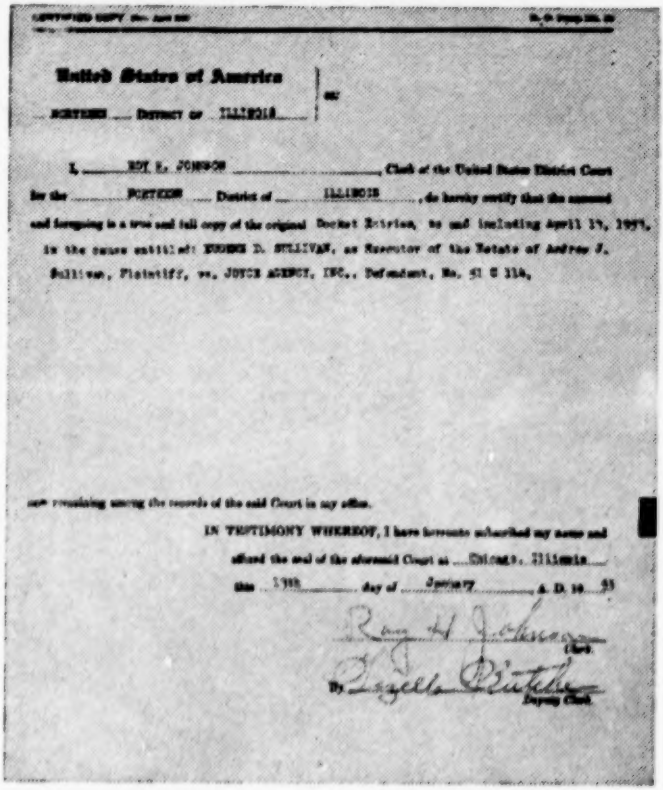


United States of America

NORTHERN District of ILLINOIS

I, ROY E. JOHNSON, Clerk of the United States District Court for the NORTHERN District of ILLINOIS, do hereby certify that the annexed and foregoing is a true and full copy of the original Docket Entries, to and including April 17, 1953, in the cause entitled: EUGENE D. SULLIVAN, as Executor of the Estate of Andrew J. Sullivan, Plaintiff, vs. JOYCE AGENCY, INC., Defendant, No. 51 C 114,

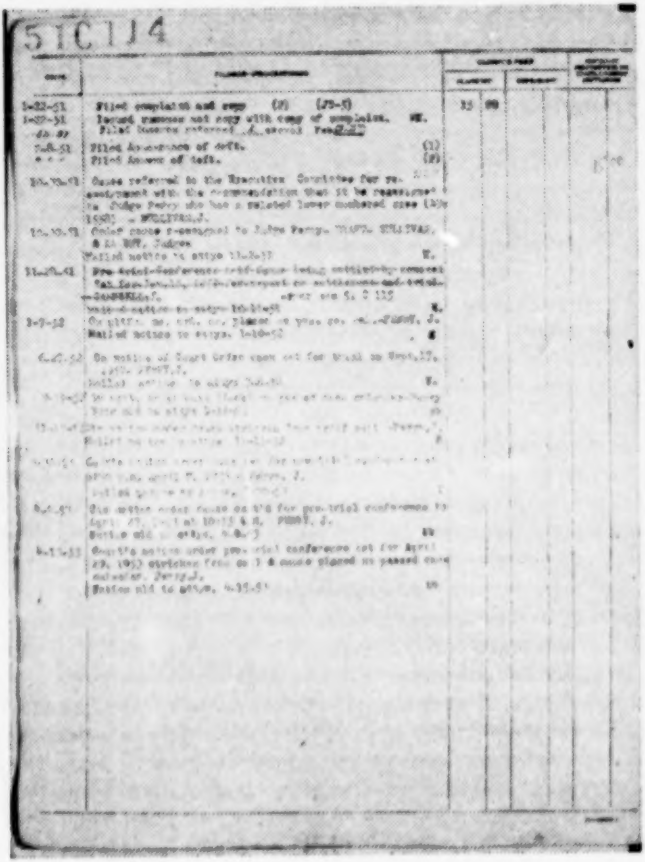
now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 19th day of January A. D. 19 53

Roy E. Johnson
Clerk.

By Rozella Pintello
Deputy Clerk.

C–2



5 IC 114

DATE	PROCEEDINGS	CLERK'S FEES		
		PLAINTIFF	DEFENDANT	
1-22-51	Filed complaint and copy (2) (75-5)	15	00	
1-27-51	Issued summons not copy with copy of complaint. WE.			
2-8-51	Filed Acceptance of Serv. (1)			
" "	Filed Answer of Defs. (2)			
10-10-51	Cause referred to the Executive Committee for re-assignment with the recommendation that it be reassigned to Judge Perry who has a related lower numbered case (No. 1558) - MCCLUNG,J.			
10-10-51	Order cause re-assigned to Judge Perry. TAYLOR, CHIEF JUDGE & LEE, Judges			
	Mailed notice to atty 10-10-51 W.			
11-28-51	Pre-trial-conference ordered upon being satisfactorily informed that [illegible] agreement on settlement and trial [illegible] - DONEGAN,J. [illegible]			
	Notice mailed to atty 12-21-51 W.			
2-9-52	On motion [illegible]			
	Mailed notice to atty. 2-12-52 W			
4-17-52	On motion of Court Order case set for trial on [illegible] - PERRY,J.			
	Mailed notice to atty 4-18-52 W.			
[illegible]	[illegible]			
[illegible]	[illegible]			
[illegible]	[illegible]			
[illegible]	[illegible]			
4-4-53	On motion order made on 4/8 for pre-trial conference to April 27, 1953 at 10:15 A.M. PERRY, J.			
	Notice mailed to atty. 4-8-53 W			
4-14-53	On motion order pre-trial conference set for April 29, 1953 stricken from docket and case placed on passed cause calendar. Perry,J.			
	Notice mailed to atty. 4-15-53 W			

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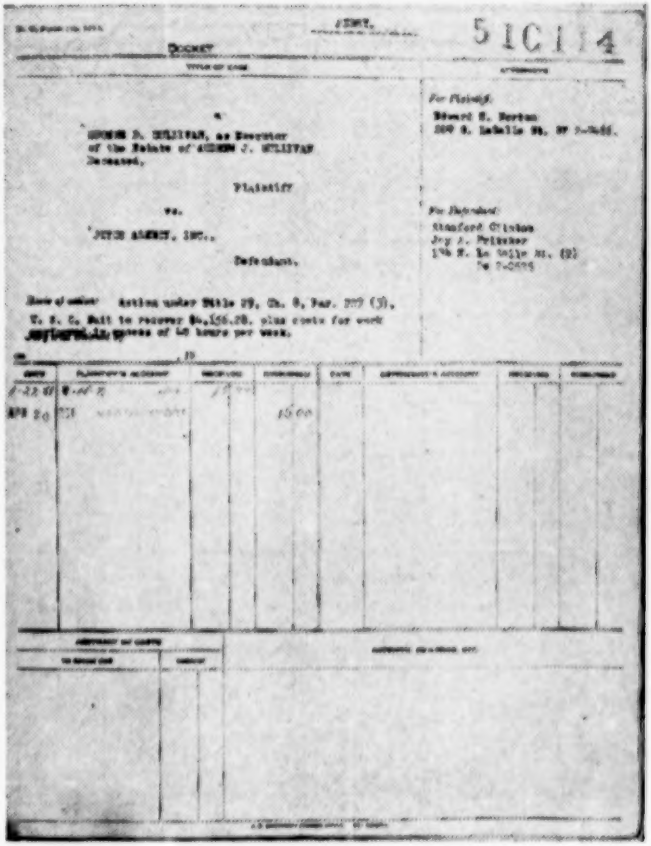

DOCKET

5 IC 1 4

For Plaintiff:
Stuart S. Berton
200 S. Labelle St. [illegible]

For Defendant:
Stanford Clinton
Jay J. Peterson
1[illegible] W. La Salle St. (2)
[illegible]

Nature of action: Action under Title 29, Ch. 8, Par. 207 (3), U. S. C. Suit to recover $4,158.28, plus costs for work [illegible] hours of 40 hours per week.

1939

DATE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED	DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
1-23-40	[illegible]	[illegible]					
APR 20	[illegible]		15 00				

CERTIFIED COPY (Rev. April 1954) U. S. Standard No. 30

United States of America
NORTHERN District of ILLINOIS } ss:

I, ROY H. JOHNSON, Clerk of the United States District Court for the NORTHERN District of ILLINOIS, do hereby certify that the annexed and foregoing is a true and full copy of the original Docket Entries, to and including April 19, 1955, in the cause entitled: HENRY CHEVLEN, Plaintiff vs. JOYCE AGENCY, Defendant, No. 50 C 10,

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois this 17th day of January, A. D. 19 55.

Roy H. Johnson
Clerk.

By Lyle A. Dittus
Deputy Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1953

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